



SEATTLE HUMAN RIGHTS COMMISSION

Homelessness Taskforce FAQ Sheet

The following questions about the scope of the ordinance change have been raised in community meetings that the Seattle Human Rights Commission has hosted over the last month.

Q: *How will this change to the ordinance impact existing City ordinances such as not being allowed to sit on the sidewalk or if someone has a person's car towed (and a person is using the car as a place to sleep)? Or if they are sleeping on a sidewalk and are asked to move?*

A: If homelessness was added to SMC 12A.06.115, a person would commit the crime of malicious harassment only when:

He or she maliciously and intentionally, commits one of the following acts:

- Causes physical injury to another person,
- By threat places another in reasonable fear of harm to his person or a third person or to the property of either, or
- Causes physical damage to or destruction of property of another or a third person's commits certain acts against another's person or property are committed against another person,

Because of his or her perception of another person's gender identity, homelessness marital status, political ideology, age or parental status

I think it is unlikely that enforcement of ordinances such as the sit and lying down ordinance (SMC 15.48.040) and parking ordinances such as the 72 hour parking limits would be held to constitute malicious harassment. Even if such enforcement would result in physical injury to another person or damage to another's property, the enforcement of such ordinances is designed to accomplish legislative purposes unrelated to the status of the potential violator. The actual acts necessary to enforce such ordinances are not malicious, nor based upon the enforcing officer's perception of a person's status.

Q: *If a tent city refused to move and police or others removed it could it be deemed malicious harassment since it would be damage to property?*

A: For similar reasons as given in the previous answer, I think it is unlikely that actions by police officers or others to move a tent city after a refusal to leave would be held to constitute malicious harassment. Again, the enforcement is not directed against another because of the person's status of being homeless but is directed to resolving a perceived public safety issue. The act of enforcement is not malicious.

Q: *If a homeless person reports malicious harassment to the police is there any chance that the record would later be open to the public thereby allowing an employer or potential landlord to know that the person was at one time homeless? There is a lot of fear amongst people of being discriminated against for having experienced homelessness.*

A: The answer to this question is a little complicated. Identifying information regarding a victim of a crime typically is included in a police report of the crime. The criminal records privacy act governs the disclosure of criminal records. If a case does not result in a conviction of crime, such records are non-conviction data and are non-disclosable.

If a case results in a conviction of a crime, such records would be conviction data and are disclosable. In this later case, the identifying information of the victim is potentially available. However, the public records act (Chapter 42.56 RCW) provides that, if at the time a criminal complaint is made, a complainant, victim or witness indicates a desire for disclosure or nondisclosure of that person's identifying information, that choice must be followed.

That means if a person requests nondisclosure of his identifying information at the time of making a complaint, that choice must be followed and even if the criminal conviction data is disclosed the identifying information of the victim must be redacted prior to release of the information.

A recent Washington Supreme Court case, *Koenig v. City of Des Moines*, 158 Wn.2d 173 (2006) adds a new wrinkle. In that case, a father filed a public disclosure case for all records related to the case of a named victim (his daughter). The city had argued that because, the requestor had named a specific person, the mere fact of disclosure (even if the identifying information was redacted) would identify the victim. The court required disclosure holding that the fact a requester may potentially connect the details of a crime to a specific victim by referencing sources other than the requested documents does not render the public's interest in information regarding the operation of the criminal justice system illegitimate or unreasonable. However, this type of specific request for records containing information for victims of malicious harassment seems unlikely.